

# PAUL HASTINGS

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**VIA EMAIL TO BYRON\_THOMAS@TXS.USCOURTS.GOV**

Hon. Vanessa Gilmore  
United States District Judge  
c/o Byron Thomas, Case Manager to Judge Gilmore  
United States Courthouse  
515 Rusk Ave., Room 9513  
Houston, Texas 77002

Re: *Align Technology, Inc. v. ClearCorrect, Inc., et al.*, Case No. 4:11-cv-00695

Dear Judge Gilmore:

Discovery closes in less than three weeks, and the parties have been unable to resolve a significant dispute concerning ClearCorrect's deficient production of updated financial data, and Align's right to supplement its damages expert report before trial. Align requires ClearCorrect's updated financial information to account for its infringing sales since June 2017. After repeated requests, ClearCorrect produced an insufficient and conflicting set of financial data the Friday afternoon before Align's expert Chris Bakewell was scheduled to be deposed. Entire columns/fields and excel tabs of the updated data are missing, the "updated" spreadsheets change the historical information that ClearCorrect previously provided, and omit the number of accused case starts. These deficiencies were identified after only a preliminary analysis, and there are likely others. ClearCorrect's deficient production has made it impossible for Align to update its damages analysis, which is not a minor issue given that by the April 2019 trial, almost two years of data will be missing. Align immediately informed ClearCorrect that it cannot proceed with Mr. Bakewell's or ClearCorrect's expert Alan Ratliff's deposition (set for November 13 and 15), until ClearCorrect provides reliable, updated information and Align can confirm its sufficiency. ClearCorrect objected to rescheduling these depositions. In addition, ClearCorrect has failed to confirm that it will agree to an exchange of supplemental financial information and expert damages reports closer to trial, without identifying any basis for its refusal to agree to this required exchange. Align requests an immediate conference to set appropriate deadlines for the production of ClearCorrect's corrected and reliable financial information, expert depositions, and further supplementation of data and expert reports before trial.

Sincerely,

/s/ Elizabeth L. Brann

Elizabeth L. Brann  
of PAUL HASTINGS LLP

cc: Counsel for Defendants